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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/315,656	05/20/1999	SHAUN CARL KERIGAN	UK9-99-055	6786

45503 7590 09/23/2004

DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HWY.,
SUITE 2110
AUSTIN, TX 78759

EXAMINER

JACKSON, JENISE E

ART UNIT	PAPER NUMBER
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2131

DATE MAILED: 09/23/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. IFW Code, 09152004

Application Number: 09/315,656
Filing Date: May 20, 1999
Appellant(s): KERIGAN ET AL.

Andrew J. Dillon 29,634
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 25, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

The real party of interest is International Business Machines Corporation of Armonk, New York.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The Examiner contacted the Appellant, Andrew Dillon, to discuss the appeal brief, in regards to the status of claims, as discussed on page 2 of brief. Appellant stated that Claims 1-12 were canceled in Applicant's Amendment B; however, there is no record of receiving Amendment B in the office. The Appellant has provided proof on Amendment B, being sent in to the office. Therefore, the Examiner has provided an advisory action with regards to claims 1-12, that agree that claims 1-12 are canceled, and Amendment B being entered in the system. This appeal involves claims 13-22.

(4) *Status of Amendments After Final*

The amendment after final rejection filed on March 26, 2004 will be entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

The rejection of claims 13-22 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,105,134 Pinder 08-15-2000

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13-22 are rejected under 35 U.S.C. 102(e). As Appellant has provided proof that claims 1-12 were canceled, proof has been provided and the amendment after final will be entered. Thus, claims 13-22 are rejected in prior Office Action, Paper No. 12/29/03. Rejection is provided below:

Claim Rejections - 35 USC § 102

1. Claims 13-22 only remain rejected under 35 U.S.C. 102(e) as being anticipated by Pinder et al.
2. As per claim 13, Pinder et al. discloses processing an encrypted data stream within a computer system adapted to receive the encrypted data stream from a data storage device(i.e. service distribution organization, (103)(see col. 4, lines 16-20, 37-45, col. 7, lines 26-38, 50-56), a data display device coupled to the computer system and having a plurality of data display areas(see col. 4, lines 13-45, col. 7, lines 26-38, 50-56), means for transferring the encrypted data

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stream from the data storage device to one of the plurality of data display areas, and the encrypted data stream being for display to one of the plurality of data display areas(see col. 4, lines 13-45, col. 7, lines 26-38), decryption means associated with the data display device for receiving the encrypted data stream and for decrypting the encrypted the encrypted data stream to produce a clear data stream for display to one of the plurality of data display areas, wherein the decryption means receives a decryption key from the computer system, the decryption key relating only to the encrypted data stream associated with the plurality of data display areas(see col. 4, lines 37-60, col. 7, lines 26-38).

3. As per claims 3, 14-15, Pinder et al. discloses the decryption key is transmitted during an interval between transmission of successive images or lines to the data display device and is protected by a suitable secure code(i.e. DES algorithm)(see col. 4, lines 37-45, col. 6, lines 21-29). The Examiner asserts that transmitting a decryption key during an interval of successive images is inherent in Mpeg standard.

4. As per claim 16, Pinder et al. discloses data associated with the one of the plurality of data display areas is not output if the decryption key associated with the one of the plurality of data display areas is not received, the Examiner asserts that Pinder et al. discloses this because each channel, such as history channel has a key pair associated with it, the decryption key must be received in order to decrypt or output channel to output area(see col. 4, lines 13-45, col. 8, lines 39-58), data associated with others of the plurality of data display areas is display independent of the receipt or non-receipt of the decryption key associated with the one of the plurality of data display areas, the Examiner asserts that Pinder discloses this because Pinder discloses that channels have a key such as history channel, thus whether the history channel is

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output or not is not contingent upon other channels which can be output such as pay per view(see col. 4, lines 15-31, col. 12, lines 46-67, col. 13, lines 24-46).

5. As per claim 17, Pinder et al. discloses a data output device is a computer display, and the data display areas are windows displayed on the display is inherent, the Examiner asserts that Pinder discloses this because, Pinder et al. discloses that the service reception component(333), could be a personal computer, thus if a personal computer is used the output would be the display in windows on the computer screen of different channels(see col. 4, lines 37-59, col. 7, lines 26-39).

6. As per claim 18, Pinder et al. discloses data associated with one of the others of the plurality of data display areas is an encrypted data stream having a decryption key that differs from the decryption key associated with the encrypted data associated with the one of the plurality of data display areas(see col. 4, lines 14-31, 37-46).

7. As per claim 20, the decryption key contains an indication of the number of data display areas associated with the data display device, which display encrypted data(col. 4, lines 15-31, col. 9, lines 30-32).

8. As per claim 21, Pinder et al. discloses a decryption key contains an indication of the relative location of the data display areas where the clear data stream is to be displayed(see col. 4, lines 14-54).

9. As per claim 22, Pinder discloses wherein the decryption key contains an indication of the size of the data display area where the clear stream is to be displayed is inherent in Mpeg(see col. 4, lines 36-67, col. 5, lines 1-10, col. 18, lines 23-36)

Claim Rejections - 35 USC § 103

10. Claim 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinder.
11. Pinder is silent on, data associated with others of the plurality of data display areas is an unencrypted data stream having no decryption key.
12. As per claim 19, wherein data associated with others of the plurality of data display areas is an unencrypted data stream having no decryption key, the Examiner asserts that it would have been obvious to have an display area, such as regular program channels that do not require an unencrypted data stream and have no decryption key, the motivation is that these channels for example 4, 7, 9, are public channels that do not require a key, anyone can view these channels.

(11) Response to Argument

Appellant argues that Pinder et al. fails to depict a television set. Pinder does disclose a television set or other display device. Pinder discloses the each program has an instance(105) of a service, which can be delivered to the television set(see col. 4, lines 23-26, 40-45). The Appellant argues that Pinder's decryption of the encrypted data stream takes place within the set top box, and thereafter, the decrypted version of a particular program or instance is coupled to a data display device. The Examiner contends that Pinder makes it clear that the decryption may take place within a display device. Pinder discloses that the encryption/decryption system has two components the service origination and service reception (see col. 7, lines 26-28). The service reception component(333) also called digital home communications terminal(DHCT)(see fig. 3, sheet 4, col. 7, lines 33-36), can decrypted EMM's, which are instances of the program that are encrypted(see col. 7, lines 57-66, col. 8, lines 39-45). Pinder discloses that DHCT(333),

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EMM's can only be decrypted by the DHCT(333) whose private key corresponds to the public key used to encrypted EMM(see col. 8, lines 39-45). The service reception component(DHCT) is implemented in a set-top box(see col. 7, lines 33-35). However, Pinder discloses that the service reception component be implemented in any device which has the necessary computation power(see col. 7, lines 36-39). Pinder discloses that it can be implemented in a personal computer, workstation or an intelligent television set(see col. 7, lines 36-39). Thus, Pinder discloses the service reception component(DHCT) which receives the instance/message from the service origination, can be implemented within a display device, which meets the claim limitations that the Appellant is arguing as not present in the Pinder.

The Appellant argues that a recording device interposed between the set top box of Pinder and a data display device will be able to record an unencrypted version of a program, contrary to the stated intent within a specification of the application. In response to the Appellant's argument that the reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. a data display device not being able to record unencrypted version of a program) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Intent or use disclosed but not claimed is not a patentable distinction from the prior art.

Pinder discloses that the service reception component can be implemented within a television set(see col. 7, lines 36-39), Pinder discloses that this television set, is called an intelligent television (see col. 7, lines 36-39). Thus, the message which is sent from the service origination to the service reception is decrypted within the intelligent television set, which meets

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the limitation of within a display device, because Pinder discloses that the encryption/decryption system has two main components: service origination component and service reception component(see col. 7, lines 26-33). Pinder discloses that the service reception component can be implemented within a set top box; however, it may be implemented with an intelligent television set(see col. 7, lines 36-39).

The Appellant argues that a data display device is a term of the art clearly indicating a device capable of providing a visual display, and further the data display device of the present specification is a computer display device. Pinder discloses a data display device capable of providing a visual display. Pinder discloses a cable company capable of providing a number of services to its customers(see col. 4, lines 16-20). Pinder provides an example of service that can be provided to a subscriber which is the history channel(see col. 4, lines 20-24). Pinder discloses that this instance of service is delivered to the television set(see col. 4, lines 31-45). Pinder also discloses a display device can be a personal computer or workstation(see col. 7, lines 36-39). Pinder discloses that the message is carried to a service reception component, which is implemented within a set top box; however, the service reception component can be implemented within a personal computer or workstation(see col. 7, lines 26-39). The service reception component(333) of Pinder is responsible for decrypting the message(see fig. 3, sheet 4, col. 8, lines 39-45), thus the message in this case would be decrypted in the personal computer or workstation, because Pinder discloses that the service reception component can be implemented with a personal computer or workstation.

Pinder discloses receiving an encrypted data stream from a data storage device. Pinder discloses a data storage device, because the service distribution organization provides subscribers

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with services/programs(see col. 4, lines 16-20). The service distribution organization encrypts the instance of the service (see col. 4, lines 22-26); this encrypted instance is broadcast over a transmission medium, which meets the limitation of the encrypted data stream(see col. 4, lines 37-40). Pinder discloses transferring the encrypted data stream from the data storage device to a data display area. Pinder discloses transferring the encrypted data stream from the data storage device to a data display area(see col. 4, lines 16-26, col. 4, lines 40-45), because the service distribution organization (i.e. data storage device), encrypts the instance of the service, to be delivered to subscribers to be delivered to the display area (see col. 4, lines 40-45). Pinder discloses the encrypted data stream being for output to one of the plurality of data display areas, because Pinder discloses the service distribution organization provides subscribers with services/programs(see col. 4, lines 16-20). The service distribution organization encrypts the instance of the service(see col. 4, lines 22-26); this encrypted instance is broadcast over a transmission medium, which meets the limitation of the encrypted data stream(see col. 4, lines 37-40). The Examiner asserts that a plurality of display areas is disclosed in Pinder, because Pinder discloses an intelligent t.v. or personal computer(see col. 7, lines 36-39) both of which can have more than one display area.

The Appellant argues that Pinder does not show or suggest, in regards to claim 19, a decryption of an encrypted data stream within a data display service utilizing a decryption key which relates to an encrypted data stream associated with one of the plurality of data display areas. The Appellant's argument is the same as above, in that the decryption must take place within the data display device. Pinder discloses that the encryption/decryption system has two components the service origination and service reception (see col. 7, lines 26-28). The service

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origination carries the message to the service reception component (see col. 7, lines 30-33). The service reception component is implemented in a set-top box(see col. 7, lines 33-35). Pinder discloses that it may, however, be implemented in any device which has the necessary computation power, Pinder discloses that it can be implemented in a personal computer, workstation or an intelligent television set(see col. 7, lines 36-38). Thus, Pinder discloses the service reception component which receives the instance/message from the service origination, can be implemented within a television set(see col. 7, lines 26-39). The Appellant argues that Pinder discloses that the decryption of the encrypted stream takes place within the set top box, and not decrypted within the data display device. Pinder discloses that the service reception component that receives the message can be implemented with an intelligent television set, and that the service reception component is responsible for decrypting (see col. 8, lines 39-45), thus, the decryption takes place within the intelligent television set, because the service reception component is implemented within the intelligent television set according to Pinder(see col. 7, lines 26-28).

(14) Conclusion

Appellant's arguments are not persuasive in that they fail to fully consider the disclosure of Pinder, and do not give fair credit to the level and knowledge of those with ordinary skill in the appropriate art.

For the above reasons, it is believed that the rejections should be sustained.


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Respectfully submitted,

Jenise E. Jackson
September 17, 2004

Conferees
Ayaz Sheikh, SPE
Gilberto Barron, SPE

BRACEWELL & PATTERSON, L.L.P.
INTELLECTUAL PROPERTY LAW
P.O. BOX 969
AUSTIN, TX 78767-0969


GILBERTO BARRON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100


AYAZ SHEIKH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100